

Nos. 13-17102, 13-17154

IN THE
United States Court of Appeals for the Ninth Circuit

FACEBOOK, INC.,
Plaintiff-Appellee,
v.

POWER VENTURES, INC.
&
STEVEN SURAJ VACHANI,
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California
Case No. 5:08-cv-05780, The Honorable Lucy Koh

**PLAINTIFF-APPELLEE’S UNOPPOSED REQUEST
FOR AN EXEMPTION FROM CIRCUIT RULE 46-5 FOR
HANNAH R. GARDEN-MONHEIT**

Plaintiff-Appellee Facebook, Inc. respectfully requests an exemption under Circuit Rule 46-5 on behalf of a former employee of this Court (Hannah R. Garden-Monheit) who is currently employed by the law firm representing Facebook in this matter, Orrick, Herrington & Sutcliffe LLP. Counsel for Defendants-Appellants has informed us that Defendants-Appellants consent to this request.

Under Circuit Rule 46-5, a former employee may not “participate or assist” in any manner “in any case that was pending in the Court

during the employee's period of employment," without applying for "an exemption" that "demonstrate[s] that the attorney had no direct or indirect involvement with the case during employment with the Court, and that the attorney was not employed or assigned in the chambers of any judge who participated in the case during the attorney's employment with the Court."

Facebook respectfully requests an exemption for Ms. Garden-Monheit so that she may represent Facebook before the Supreme Court in opposing Defendants-Appellants' petition for certiorari from this Court's decision. *See Power Ventures, Inc. v. Facebook, Inc.*, No. 16-1105 (U.S.). As demonstrated in the attached application, Ms. Garden-Monheit satisfies the requirements for an exemption because this case was being briefed and awaiting calendaring for argument during her clerkship, and this case had no contact with her judge's chambers during that time.

Eric A. Shumsky
ORRICK, HERRINGTON &
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1152 15th Street NW
Washington, DC 20005

Respectfully submitted,

/s/Brian P. Goldman

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Counsel for Plaintiff-Appellee

April 26, 2017

**APPLICATION OF HANNAH R. GARDEN-MONHEIT FOR
REQUEST FOR EXEMPTION FROM CIRCUIT RULE 46-5**

I, Hannah R. Garden-Monheit, am an associate at the law firm of Orrick, Herrington & Sutcliffe LLP. Orrick represents Plaintiff-Appellee Facebook in this case.

The notices of appeal in this case were filed on October 2, 2013 and October 23, 2013. The consolidated cases were argued before a three-judge panel on December 9, 2015. The Panel issued its opinion on July 12, 2016. Defendants-Appellants filed their petition for panel rehearing and rehearing en banc on August 9, 2016. The Panel issued an amended opinion on December 9, 2016 and simultaneously denied the petition for panel rehearing and rehearing en banc.

From June 2014 until July 2015, I served as a law clerk in the Chambers of Judge Stephen Reinhardt. During that time, the appeal was not assigned to Judge Reinhardt, and he did not participate in ruling on any motion or other aspect of the case, including making, responding to, or voting on an en banc call. The appeal was still being briefed and then awaiting calendaring during the period of my employment. Defendants-Appellants did not file their rehearing

petition until after my clerkship had ended. I had no direct or indirect involvement with this case during my clerkship.

I therefore request that I be exempted from Circuit Rule 46-5 and be permitted to participate in this case in the pending proceedings before the Supreme Court.

Respectfully submitted,

/s/ *Hannah R. Garden-Monheit*

Hannah R. Garden-Monheit

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SUTCLIFFE LLP

1152 15th Street NW

Washington, DC 20005

April 26, 2017

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on April 26, 2017.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ *Brian P. Goldman*

Brian P. Goldman

Counsel for Plaintiff-Appellee